



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No: 4996-00
5 January 2001

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 January 2001. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 17 July 1981 for five years as a BT3 (E-4). At the time of your reenlistment, you had completed more than three years of prior active service.

The record reflects that you served without incident until 16 March 1982 when you were convicted by summary court-martial of three brief periods of unauthorized absence (UA), two instances of failure to go to your appointed place of duty, and disobedience of the orders of an officer and a superior petty officer. You were sentenced to 45 days hard labor without confinement, 60 days of restriction, a forfeiture of \$508.20, and reduction in rank to BTFR (E-1). However, the convening authority suspended part of the sentence and directed execution of the reduction in rate only to BTFN (E-3) for a period of 30 days.

On 15 June 1982 you were convicted by a second summary court-martial of four instances of disrespect towards an officer,

failure to obey an officer's order, assault, and drunk and disorderly conduct. You were sentenced to confinement at hard labor for 30 days, a forfeiture of \$376, and reduction in rate to BTFR (E-1). On 2 July 1982 you received nonjudicial punishment for a 16-hour period of UA, missing movement, failure to go to your appointed place of duty, failure to obey a lawful order, and dereliction in the performance of your duties.

On 6 July 1982, you were notified that you were being recommended for discharge under other than honorable conditions by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. You were advised of your procedural rights, declined to consult with legal counsel, and waived your right to present your case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended that you be separated under other than honorable conditions by reason of misconduct. On 10 August 1982, the Chief of Naval Personnel approved the recommendation and directed discharge under other than honorable conditions. You were so discharged on 13 August 1982.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your prior honorable service and the fact that it has been more than 18 years since you were discharged. The Board noted your contention to the effect that it was your violent confrontation with of two homosexuals which led to a downturn in your career and discharge. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given your record of two summary court-martial convictions and an NJP. The Board noted the aggravating factor that you waived an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. Your contention is neither supported by the evidence of record nor by any evidence submitted in support of your application. The Board concluded that you were guilty of too much misconduct during the your second enlistment to warrant recharacterization to honorable or under honorable conditions. Regulations require the assignment of an RE-4 reenlistment code to individuals discharged by reason of misconduct. The Board thus concluded that the discharge and reenlistment code were proper and no changes are warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director